

SAN DIEGO COUNTY SUPERIOR COURT RULES

Revised January 1, 2004

DAILY JOURNAL CORPORATION

915 East First Street, Los Angeles, California 90012
P.O. Box 54026, Los Angeles, California 90054
Telephone (213) 229-5300

San Diego Commerce
2652 4th Ave. 2nd Floor
San Diego, CA 92103
Telephone (619) 232-3486
Copyright 2004. All Rights Reserved.

SAN DIEGO COUNTY

Table of Contents

Revised January 1, 2004

DIVISION IV

SECTION TWO: LANTERMAN-PETRIS-SHORT RULES

CHAPTER 24

LOCATIONS, VENUE, PROCEDURES, FEES

4.191	Address and Telephone Number for Mental Health (LPS) Division (Renumbered 7/1/2001).....
4.192	Supervising Judge (Renumbered 7/1/2001)
4.193	Venue (Renumbered 7/1/2001)
4.194	Change of Venue (Renumbered 7/1/2001).....
4.195	Orders (Renumbered 7/1/2001).....
4.196	Filings (Renumbered 7/1/2001)
4.197	Caption of Petition or Other Papers (Renumbered 7/1/2001)
4.198	Use of Printed Forms (Renumbered 7/1/2001)
4.199	Verification (Renumbered 7/1/2001)
4.200	Amendment of Pleadings (Renumbered 7/1/2001)
4.201	Services Subject to Compensation (Renumbered 7/1/2001)
4.202	Costs Subject to Reimbursement (Renumbered 7/1/2001).....
4.203	Amount of Attorney Fees and Costs (Renumbered 7/1/2001).....
4.204	Services Subject to Compensation (Renumbered 7/1/2001)
4.205	Costs Subject to Reimbursement (Renumbered 7/1/2001).....
4.206	Amount of Attorney Fees and Costs (Renumbered 7/1/2001).....
4.207	Reimbursement to County (Renumbered 7/1/2001).....
4.208	Procedural Requirements (Renumbered 7/1/2001)
4.209	Attorney's Obligations (Renumbered 7/1/2001).....
4.210	Notice of Termination of Contract (Renumbered 7/1/2001)

CHAPTER 25

CONSERVATORSHIP

4.211	Conservator Defined (Renumbered 7/1/2001)
4.212	Conservatorship Investigation Report (Renumbered 7/1/2001)
4.213	Conservatorship Investigation (Renumbered 7/1/2001).....
4.214	Notice of Temporary Conservatorship (Renumbered 7/1/2001)
4.215	Filing of Petition (Renumbered 7/1/2001)
4.216	Declaration for Temporary Conservatorship (Renumbered 7/1/2001).....
4.217	Transportation of Conservatee (Renumbered 7/1/2001)
4.218	Waiver of Presence of Physician (Renumbered 7/1/2001).....
4.219	Conservatorship Referrals (Renumbered 7/1/2001).....
4.220	Conservatee Unable or Unwilling to Attend Hearing (Renumbered 7/1/2001).....
4.221	Doctor Reporters and Records (Renumbered 7/1/2001)
4.222	Appointment of Conservator (Renumbered 7/1/2001).....
4.223	Appointment of Co-conservators (Renumbered 7/1/2001)
4.224	Successor Public Conservator by Operation of Law (Renumbered 7/1/2001)
4.225	Successor Conservator - Private and Public (Renumbered 7/1/2001).....
4.226	Substitution of Conservators (Renumbered 7/1/2001)
4.227	Preparation of Orders (Renumbered 7/1/2001)
4.228	Subpoenas (Renumbered 7/1/2001)
4.229	Rehearing on "Grave Disability" (Renumbered 7/1/2001).....
4.230	Time for Filing (Renumbered 7/1/2001).....
4.231	Burden (Renumbered 7/1/2001).....
4.232	Jury (Renumbered 7/1/2001).....
4.233	Procedure (Renumbered 7/1/2001)
4.234	Form of Petition (Renumbered 7/1/2001)
4.235	Time for Hearing (Renumbered 7/1/2001).....

San Diego County Superior Court Rules - Table of Contents

4.236	Preparation of Order (Renumbered 7/1/2001)
4.237	Rehearings on Powers Granted and Rights Denied (Renumbered 7/1/2001)
4.238	Procedure (Renumbered 7/1/2001)
4.239	Order (Renumbered 7/1/2001)
4.240	Notice (Renumbered 7/1/2001)
4.241	Petition (Renumbered 7/1/2001)
4.242	Service (Renumbered 7/1/2001)
4.243	Consent to Conservatorship (Renumbered 7/1/2001)
4.244	Hearing (Renumbered 7/1/2001)
4.245	Calendar (Renumbered 7/1/2001)
4.246	Notice of Hearing (Renumbered 7/1/2001)
4.247	Inaction on Petition (Renumbered 7/1/2001)
4.248	Notice of Expiration (Renumbered 7/1/2001)
4.249	Form and Service of Notice (Renumbered 7/1/2001)
4.250	Decree of Termination (Renumbered 7/1/2001)
4.251	Service of Decree (Renumbered 7/1/2001)

CHAPTER 26 NOTICES, CALENDAR, TERMINATION

4.252	General (Renumbered 7/1/2001)
4.253	Service - Proof of Service (Renumbered 7/1/2001)
4.254	Form of Notice (Renumbered 7/1/2001)
4.255	Notices Other than Written (Renumbered 7/1/2001)
4.256	Timing of Written Notices (Renumbered 7/1/2001)
4.257	Amendment of Pleadings (Renumbered 7/1/2001)
4.258	Calendars (Renumbered 7/1/2001)
4.259	Calendaring Hearings (Renumbered 7/1/2001)
4.260	Date of Hearing (Renumbered 7/1/2001)
4.261	Hearing Once Notified Cannot be Advanced (Renumbered 7/1/2001)
4.262	Priority of Cases (Renumbered 7/1/2001)
4.263	Continuances (Renumbered 7/1/2001)
4.264	Automatic Continuance of a Temporary Conservatorship (Renumbered 7/1/2001)
4.265	Request for Early Termination (Renumbered 7/1/2001)
4.266	Termination by Ex Parte Order (Renumbered 7/1/2001)
4.267	Hearing upon Notice (Renumbered 7/1/2001)
4.268	Service of Notice (Renumbered 7/1/2001)
4.269	Termination Without Objection (Renumbered 7/1/2001)
4.270	Notice of Conservatee for Early Termination (Renumbered 7/1/2001)
4.271	Expiration of Temporary Conservatorship (Renumbered 7/1/2001)

CHAPTER 27 JURY TRIALS

4.272	Notice (Renumbered 7/1/2001)
4.273	Calendaring (Renumbered 7/1/2001)
4.274	Disposition Without Trial (Renumbered 7/1/2001)
4.275	Post Verdict Matters (Renumbered 7/1/2001)

CHAPTER 28 AUTHORIZATION FOR CONSENT TO MEDICAL/SURGICAL PROCEDURES

4.276	General (Renumbered 7/1/2001)
4.277	Petition and Order (Renumbered 7/1/2001)
4.278	Hearing (Renumbered 7/1/2001)
4.279	Notice (Renumbered 7/1/2001)
4.280	Transportation (Renumbered 7/1/2001)
4.281	Rehearing (Renumbered 7/1/2001)
4.282	Emergency Treatment (Renumbered 7/1/2001)

CHAPTER 29 WRIT OF HABEAS CORPUS

San Diego County Superior Court Rules - Table of Contents

4.283	Appointment of Counsel (Renumbered 7/1/2001)
4.284	Filing Petitions, Orders, Writ (Renumbered 7/1/2001)
4.285	Applications for Writ Seeking Release or Modification of Custody (Renumbered 7/1/2001).....
4.286	Hearing (Renumbered 7/1/2001).....
4.287	Time of Hearing (Renumbered 7/1/2001).....

CHAPTER 30 ELECTROCONVULSIVE TREATMENT

4.288	Conditions for Administering (Renumbered 7/1/2001).....
4.289	Appointment of Attorney (Renumbered 7/1/2001)
4.290	Attorney's Consent to Patient's Capacity (Renumbered 7/1/2001)
4.291	Filing Petition (Renumbered 7/1/2001).....
4.292	Conflict of Interest (Renumbered 7/1/2001)
4.293	Declaration of Treating Physician (Renumbered 7/1/2001).....
4.294	Change of Patient's Condition (Renumbered 7/1/2001)
4.295	Appointment of Temporary Conservator (Renumbered 7/1/2001)

CHAPTER 31 180 DAYS POST CERTIFICATION PROCEDURES FOR IMMINENTLY DANGEROUS PERSONS

4.296	Preparation of Petition (Renumbered 7/1/2001)
4.297	Filing and Service of Petition (Renumbered 7/1/2001).....
4.298	Affidavits (Renumbered 7/1/2001)
4.299	Right to Attorney and Jury Trial (Renumbered 7/1/2001)

CHAPTER 32 CERTIFICATION REVIEW HEARINGS

4.300	Compliance with Welfare and Institutions Code (Renumbered 7/1/2001).....
4.301	Procedures (Renumbered 7/1/2001).....

CHAPTER 33 DETERMINATION OF CAPACITY OF MENTAL HEALTH PATIENTS TO GIVE OR WITHHOLD INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATION (RIESE HEARING)

4.302	Scope and Purpose (Renumbered 7/1/2001)
4.303	Petition (Renumbered 7/1/2001)
4.304	Documents (Renumbered 7/1/2001)
4.305	Calendaring Hearings (Renumbered 7/1/2001).....
4.306	Counsel (Renumbered 7/1/2001)
4.307	Attorney Duties (Renumbered 7/1/2001)
4.308	Appointment of Hearing Officers (Renumbered 7/1/2001).....
4.309	Patient Representation (Renumbered 7/1/2001).....
4.310	Treating Physician/Facility Representative (Renumbered 7/1/2001).....
4.311	Surroundings of Hearing (Renumbered 7/1/2001)
4.312	Burden (Renumbered 7/1/2001).....
4.313	Determination of Capacity (Renumbered 7/1/2001)
4.314	Patient Presence (Renumbered 7/1/2001)
4.315	Access to Records (Renumbered 7/1/2001).....
4.316	Continuance of Hearings (Renumbered 7/1/2001).....
4.317	Determination (Renumbered 7/1/2001).....
4.318	Confidentiality (Renumbered 7/1/2001).....

CHAPTER 34 WRIT OF HABEAS CORPUS PROCEDURES FOR MINORS ADMITTED TO PRIVATE PSYCHIATRIC FACILITY BY A PARENT

4.319	Applicability and Procedures (Renumbered 7/1/2001)
-------	--

San Diego County Superior Court Rules - Table of Contents

CHAPTER 35 ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS FOR ACUTE CARE PSYCHIATRIC HOSPITAL TREATMENT WHO ARE WARDS OR DEPENDENTS OF THE JUVENILE COURT

4.320	Applicability and Definitions (Renumbered 7/1/2001)
4.321	Involuntary Hospitalization for the Initial 72-hour Period (Renumbered 7/1/2001)
4.322	Involuntary Hospitalization After the Initial 72-hour Period (Renumbered 7/1/2001)
4.323	Involuntary Hospitalization (Welf. & Inst. Code, § 6552) (Renumbered 7/1/2001)

CHAPTER 36 ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER CONTRACT WITH THE COUNTY ("ROGER S" HEARINGS)

4.324	Applicability (Renumbered 7/1/2001)
4.325	Definitions (Renumbered 7/1/2001)
4.326	Initiating Hospitalization (Renumbered 7/1/2001)
4.327	Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing (Renumbered 7/1/2001)
4.328	Protesting Minor (Renumbered 7/1/2001)
4.329	Facility Review (Renumbered 7/1/2001)
4.330	Confidentiality (Renumbered 7/1/2001)
4.331	Records (Renumbered 7/1/2001)
4.332	Writ of Habeas Corpus (Renumbered 7/1/2001)
4.333	Filing a Writ of Habeas Corpus (Renumbered 7/1/2001)

DIVISION IV
SECTION TWO:
LANTERMAN - PETRIS - SHORT
RULES (LPS)
CHAPTER 24
LOCATIONS, VENUE, PROCEDURES,
FEES

Rule 4.191

Address and Telephone Number for Mental Health (LPS) Division

The San Diego Superior Court:
Department, as designated by the Presiding Judge
220 West Broadway
San Diego, California 92101

The Mental Health Desk:
Clerk, San Diego Superior Court, Room 3005
220 West Broadway
San Diego, California 92101
(619) 531-3154

Public Conservator:
3851 Rosecrans St., Room G-32
San Diego, California 92110
(619) 692-5664
(Adopted 7/11/84; Renumbered Eff. 1/1/90;
Renumbered & Amended Eff. 7/1/95; Rev. Eff.
1/1/2001)

Rule 4.192

Supervising Judge

Unless otherwise specifically mentioned, all references in these rules to the supervising judge mean the judge designated to preside over the Mental Health Division of the San Diego Superior Court.
(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.193

Venue

San Diego County jurisdiction is composed of one division, namely San Diego. Original petitions must show the proper venue and be filed in the San Diego Superior Court
(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.194

Change of Venue

Requests for change of venue must be directed to the supervising judge of the Mental Health Division, San Diego Superior Court. The request should take the form of a declaration stating the reasons why a change of venue is required. The supervising judge may waive the declaration in cases of emergency.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.195

Orders

Orders at variance with rules 4.262 through 4.265 may be granted by the supervising judge upon the showing of good cause.

(Adopted 7/11/84; Renumbered Eff. 1/1/90;
Renumber and Amended Eff. 7/1/95; Renumbered
eff. 7/1/2001)

Rule 4.196

Filings

Unless otherwise provided by these rules, all filings with the court must be made at the Mental Health Desk of the clerk's office.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.197

Caption of Petition or Other Papers

The caption of petition or other papers must be all-inclusive regarding the relief sought in the petition or papers so that the matter may be properly calendared. The court clerk is not required to read the body of the petition or other papers or determine the full name of the document.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.198

Use of Printed Forms

The use of printed forms available through the court clerk's office and/or approved by the Judicial Council is preferred by the court and may be used in all matters where applicable. If a form is being used, it must be the latest revised form. If a form cannot be used, counsel should prepare their own documents using a preferred form as a guide.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.199

Verification

All papers which require verification shall be verified in substantially the following manner:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this (name of document) is executed on (date).

(signature)

(name typed)

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95;
7/1/2001)

Rule 4.200**Amendment of Pleadings**

The attention of attorneys is called to rule 205 of California Rules of Court, as adopted by the Judicial Council, which reads as follows:

"An amendment, as distinguished from an amended pleading, shall designate the pages and lines of the prior pleading which is thereby amended. No amendment shall be made by alterations on the face of a pleading except by permission of the court, and all alterations shall be initialed by the court or clerk.

"When amending or supplementing petitions, the document should be captioned 'AMENDMENT TO...' or 'SUPPLEMENT TO...' as such a caption does not require additional notice. However, if the caption of 'AMENDED PETITION...' is used, the court must set it for hearing and notice as required by statute will have to be given (including publication)." (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.201**Services Subject to Compensation**

Pursuant to authorization of the Board of Supervisors, the Public Defender is appointed to represent patients in the Mental Health Court, however, in any case where counsel has been appointed to represent persons coming under the LPS Act, or other related mental health law proceedings, and where payment of attorney fees will be made by the County of San Diego through the Office of Alternate Defense Counsel, the determination of which attorney services are to be compensated shall be made by the Office of Alternative Defense Counsel, consistent with the policies and procedures of the Office of Alternate Defense Counsel Manual effective at the time such services are rendered. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.202**Costs Subject to Reimbursement**

In those cases defined in rule 4.201 where reimbursement of attorney costs, including mileage, will be made by the County of San Diego through the Office of Alternate Defense Counsel, the determination of which costs are subject to reimbursement shall be made by the Office of Alternate Defense Counsel. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.203**Amount of Attorney Fees and Costs**

In those cases addressed in 4.201 and 4.202 above, the amount of fees for various legal services and the amount of costs subject to reimbursement, shall be determined by the Office of Alternate Defense Counsel, the determination of which costs are subject to reimbursement shall be made by the Office of Alternate Defense Counsel. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.204**Services Subject to Compensation**

In those cases as described in rule 4.201, where counsel has been appointed to represent the patient but where the patient has sufficient funds to pay attorneys fees, the determination of which attorney services are to be compensated and the amount of compensation shall be made by the court upon a timely request by counsel. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.205**Costs Subject to Reimbursement**

In those cases described in rule 4.204, where the patient has sufficient funds to reimburse the attorney for costs incurred relative to the case, the determination of which costs are to be reimbursed shall be made by the court upon a timely request by counsel. (Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.206**Amount of Attorney Fees and Costs**

In those cases described in rules 4.204 and 4.205, the amount of fees for various legal services and the amount of costs subject to reimbursement shall be determined by the court upon a timely request by counsel. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.207**Reimbursement to County**

By stipulation of the parties, pursuant to notices contained rule 4.208, reimbursement of the County for fees and costs can be ordered. (Adopted 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.208**Procedural Requirements****A. Notice to Patient**

(1) Payment of attorney fees and reimbursement for attorney costs will not be ordered paid by conservatee unless the conservatee, and the conservator for the estate or the conservatee's personal representative, if any have been notified in writing of the possibility that fees and costs may be ordered to be paid by the conservatee.

(2) It shall be the duty of the office of the Public Conservator, or such agency or individual as may file the initial petition for permanent conservatorship to include on the face thereof written notice of the possibility that the conservatee's estate may be held liable for the payment of attorney fees and reimbursement of cost incurred for services rendered relative to any mental health law proceedings that takes place after the filing of said petition and during the pendency of the conservatorship.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.209**Attorney's Obligations****A. Request for Fees and Costs**

(1) A request for payment of fees and/or reimbursement of costs shall be made in open court at the time of the subject hearing or shall be deemed waived;

(2) Counsel for the conservatee shall have the obligation of specifying the amount of attorney fees and costs, and shall have the burden of proving the reasonableness and accuracy of said request, and the fact that the conservatee has sufficient funds to compensate the attorney for costs and attorney's fee;

(3) The court may orally rule on the request at the time of the hearing and set the amount of fees to be paid and the amount of costs to be reimbursed, if the total of such fees and costs is in the amount customarily awarded in routine cases.

(4) If fees and costs are not awarded under subsection (3) above, counsel requesting payment and/or reimbursement must submit a separate noticed petition for same, and calendar a hearing with proper notification to the conservatee, and the conservator and the conservator of the estate and the conservatee's personal representative, if any, in accordance with the established notice procedures as stated in "Notices" of these rules.

(5) In determining whether fees and costs shall be awarded in excess of the customary amount, and the amount hereof, the court shall consider, among other things, whether and when the attorney for the conservatee personally notified the patient, and the conservator of the estate and personal

representative, if any, that the attorney would be requesting fees, including the hourly rate, and an estimate of the total fees and costs to be requested.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.210**Notice of Termination of Contract**

Where an attorney who has handled LPS cases pursuant to policies and procedures of the Alternate Defense Counsel discontinues providing such services, notice shall immediately be served by such attorney on the Public Conservator and the Office of Alternate Defense Counsel. Proof of service and a copy of the notice shall be filed at the Mental Health desk and the Office of the Public Defender.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended, Eff. 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

CHAPTER 25 CONSERVATORSHIP

Rule 4.211**Conservator Defined**

Where reference is made to "conservator" within these rules, it shall also apply to the temporary conservator, excepting where otherwise provided in these rules or in statute.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; Renumbered & Amended, Eff. 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.212**Conservatorship Investigation Report**

Conservatorship investigation report shall be served on the attorney of record for the proposed conservatee at the same time and in the same manner as the notice of hearing.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.213**Conservatorship Investigation**

As used in section 5352 of the Welfare and Institutions Code, the term "officer providing conservatorship investigation" refers to the director of San Diego Superior Court Mental Health Services, also known as Public Conservator or designee.

(Adopted 7/1/84; Renumbered, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered Eff. 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.214**Notice of Temporary Conservatorship**

A copy of the order appointing a temporary conservator shall be mailed to the conservatee within five working days of the establishment of the temporary conservatorship by the petitioner. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.215**Filing of Petition**

At the time of the establishment of the temporary conservatorship, the Public Conservator shall cause to be calendared the hearing for the appointment of a conservator. (Adopted 7/11/84; Renumbered, Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.216**Declaration for Temporary Conservatorship**

A temporary conservatorship may be established on the basis of declarations submitted by the professional persons recommending conservatorship as referenced in Welfare and Institutions Code section 5352.1 (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.217**Transportation of Conservatee**

The conservator is responsible for obtaining the necessary transportation and ensuring that the conservatee appears in court for any scheduled hearings requiring the conservatee's presence. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.218**Waiver of Presence of Physician**

The presence of a physician at a conservatorship hearing may be excused in advance of the date of the hearing by the attorney for the proposed conservatee. The Public Conservator shall be notified of such waiver by the attorney. When the physician has been excused from the being present for a hearing and at the hearing the matter is then contested and the presence of the physician is desired, the matter shall be continued and the temporary conservatorship shall remain in effect until the date of the hearing. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.219**Conservatorship Referrals**

Upon stipulation of the parties, the conservatorship referral from a psychiatrist and/or a licensed clinical psychologist who is on the staff of a Lanterman-Petris-Short Act approved facility may be

received into evidence. The conservatorship investigation report prepared by the Public Conservator is admissible into evidence under the Welfare and Institutions Code.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.220**Conservatee Unable or Unwilling to Attend Hearing**

When a proposed conservatee or conservatee is unwilling to attend a hearing concerning the conservatorship, the nature of such unwillingness shall be established to the court by affidavit, declaration, or certificate signed under penalty of perjury and in accordance with Probate Code section 1825 or by testimony and the court may, in its discretion, proceed in the absence of the conservatee. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered Eff. 7/1/95; 7/1/2001)

Rule 4.221**Doctor Reports and Records**

If any evaluation, report of physicians, psychologists, social workers, nurses or other professional persons is referred to or quoted in a conservatorship investigation report, pursuant to Welfare and Institutions Code section 5354, the date of such information and the location of such evaluation, report or record shall be contained in the conservatorship investigation report with sufficient specificity to allow an attorney of record an opportunity to either view or subpoena such information. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.222**Appointment of Conservator**

Upon the appointment of a conservator, the conservator shall send notice to the conservatee of the establishment of the conservatorship within 10 working days and said notice shall include the name, address and telephone number of the conservator. Where the conservator is a public official, the notice shall include the name and telephone number of the social worker assigned to the case. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.223**Appointment of Co-conservators**

Co-conservators shall be appointed only under unusual circumstances where it appears to the court that the appointment of a co-conservator is necessary and would be in the best interest of the conservatee.

Where there is evidence that the court-appointed conservator is not available to function, or cannot be located, or for any other reason is not able to perform the duties or responsibilities of conservator, the Public Conservator may petition the court for appointment as co-conservator pending further investigation of the conservatorship. Following the investigation, the Public Conservator shall make a report to the court and take necessary action to remediate the problem with the conservatorship. For additional information see section 2654 of Probate Code.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.224

Successor Public Conservator by Operation of Law

Where a public officer is appointed to serve as conservator, a successor in office to such public officer shall be deemed the successor conservator by operation of law.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.225

Successor Conservator - Private and Public

When, for any reason, a conservator seeks to be relieved, the court may appoint a successor conservator pursuant to section 2680 et seq. of the Probate Code. The successor conservator shall notify the conservatee of his or her appointment.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.226

Substitution of Conservators

Where a change in conservators is requested at the time of a re-establishment, the re-establishment petition shall include the name, address and telephone number of the prior conservator, the name, address and telephone of the proposed conservator, and the reasons for substitution and proof of service on the prior conservator, if not the moving party.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.227

Preparation of Orders

The petitioner shall prepare all necessary orders required in the establishment of conservatorships and appointment of a conservator.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.228

Subpoenas

Subpoenas and subpoenas duces tecum regarding LPS conservatorships and related matters shall be issued in accordance with Code of Civil Procedure section 1985, et seq., provided the provisions for confidentiality as contained in Welfare and Institutions Code section 5328 are not violated.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.429

Rehearing on "Grave Disability"

Rehearings on the issue of whether the conservatee remains "gravely disabled" are governed by Welfare and Institutions Code section 5364. For rehearing involving other issues, see rule 4.237, infra.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.230

Time for Filing

A petition requesting a rehearing may be filed by the conservatee or conservatee's attorney at any time. After the filing of the first petition for rehearing pursuant to Welfare and Institutions Code section 5364, no further petition for rehearing shall be submitted for a period of six months.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.231

Burden

The burden of proof is upon the conservatee to establish by a preponderance of the evidence that they are no longer gravely disabled as defined in Welfare and Institutions Code section 5008, subdivision (h).

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.232

Jury

There is no right to a jury trial at a rehearing pursuant to this section.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.233

Procedure

The attorney for the conservatee shall call the Mental Health clerk to obtain a hearing date for the

hearing petition. The attorney may issue the notice of hearing. The notice must be served at least 15 days prior to the hearing. Notice is required to the conservator and all relatives of the conservatee within the second degree.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.234**Form of Petition**

The petition for rehearing must specifically state whether it is brought pursuant to Welfare and Institutions Code section 5364 or section 5358.3, or both. The petition must state the nature, filing and hearing dates of all previous rehearing petitions filed on behalf of the conservatee.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.235**Time for Hearing**

A hearing pursuant to the petition for rehearing shall be held within 30 days of the filing of the petition as required by Welfare and Institutions Code section 5365.

(Adopted 7/11/84; Renumbered Eff. 1/1/90, Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.236**Preparation of Order**

If the court grants termination of the conservatorship pursuant to Welfare and Institutions Code section 5364, the order will be prepared by the Public Conservator. If the matter involves a private conservator, said order will be prepared by the conservatee's attorney. The order shall include notice of restoration of the right to vote (Elec. Code, § 707.7, subd. (c)) and the Registrar of Voters shall be notified of the restoration by the court.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.237**Rehearings on Powers Granted and Rights Denied**

Rehearings on the issue of the powers conferred on the conservator and the rights denied the conservatee under Welfare and Institutions Code sections 5357 and 5358 are governed by Welfare and Institutions Code section 5358.3. After the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.238**Procedure**

The procedure for the filing and hearing of a petition or rehearing brought pursuant to Welfare and Institutions Code section 5358.3 shall be the same as outlined in rules 4.230 through 4.235, *supra*. The burden of proof shall be upon the conservatee to show by a preponderance of the evidence why a right should be restored.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.239**Order**

If the court orders restoration of a right pursuant to a rehearing under this rule and Welfare and Institutions Code section 5358.3, the order reflecting such restoration shall be prepared as provided in rule 4.236.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.240**Notice**

The Mental Health clerk shall serve notice of the forthcoming termination of a one-year conservatorship upon the conservatee, the conservator, the conservatee's attorney and the person in charge of the facility wherein the conservatee resides and, if a private conservator, to the Public Conservator, at least 60 days prior to the expiration of the one-year period.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.241**Petition**

A petition to reappoint the conservator must be filed in the San Diego Superior Court by the conservator, and a copy of same must be transmitted to the facility wherein the patient resides 30 days prior to the date of scheduled termination.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.242**Service**

Notice of the petition to reappoint the conservator shall be served by the conservator on the conservatee, the conservatee's attorney and Public Conservator, at least 15 days prior to the date of the hearing thereon. Said notice shall be served personally or by first class mail, postage prepaid.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

Rule 4.243**Consent to Conservatorship**

If the conservatee is not opposed to the re-establishment of the conservatorship, or elects to not attend the proceedings, or if the conservatee is unable to participate in the advisement and inquiry relevant to the re-establishment of the conservatorship, the attorney for the conservatee shall either orally articulate the pertinent facts to the court or file a "Stipulation of Attorney to Reestablish LPS Conservatorship."

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.244

Hearing

If the conservatee disagrees with the reappointment of the conservator or the conditions and disabilities imposed, the attorney shall request a hearing date thereon (if not already scheduled by the conservator) by filing a request for hearing with the Mental Health clerk within 15 days of the date of mailing of the notice of the petition for reappointment as evidenced by the proof of service by mail filed and served therewith.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.245

Calendar

Upon receipt of the original and two copies of the request for hearing, the Mental Health clerk shall immediately calendar a hearing on the matter to be heard no later than 30 days from the date of filing of the written request, and no sooner than 21 days therefrom.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.246

Notice of Hearing

Notice of the hearing shall be served on the conservator and conservatee's attorney at least 15 days before the hearing.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.247

Inaction on Petition

If no consent or request for a hearing has been made either by the conservator or the conservatee or the conservatee's attorney within 15 days from the date of the notice of the filing of the petition, the court may, on its own motion, accept or reject the petition for reappointment.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.248

Notice of Expiration

The Mental Health clerk shall serve notice to the conservator, the conservatee, the conservatee's attorney and the person in charge of the facility wherein the conservatee resides at least 60 days prior to the scheduled expiration of the conservatorship.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.249

Form and Service of Notice

Said notification shall be in writing and may be made in person or by regular mail.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.250

Decree of Termination

If no petition to reappoint the conservator is filed at or before the scheduled termination of the one-year conservatorship period, the court shall issue a decree terminating the conservatorship.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.251

Service of Decree

The decree of termination shall be sent by the Mental Health clerk to the conservatee and the conservatee's attorney by first class mail.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

CHAPTER 26 NOTICES, CALENDAR, TERMINATION

Rule 4.252

General

A. Unless specifically excepted by these rules, all matters presented to the court must be preceded by written notice served on the party affected or the attorney representing that party if the attorney's identity is known.

B. A copy of any order or judgment issued after bench or jury trial must be submitted to opposing counsel before presentation to the trial judge. A conformed copy of such order must be sent to opposing counsel.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.253

Service-Proof of Service

A. Service of any notice on a conservatee must be done in accordance with Welfare and Institutions Code sections 5000 et seq., or Probate Code section

1200 et seq. where no method appears in the Welfare and Institutions Code. Service on any attorney may be made in accordance with Code of Civil Procedure section 1011 or 1012.

B. A declaration of service for any written notice required by statute must be completed and filed with this court. The declaration must comply with Code of Civil Procedure section 1013, subdivision (a), but need not be accompanied by a copy of the notice so long as the original notice is on file and is clearly identified in the declaration of service.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.254

Form of Notice

All written notices must substantially comply with the requirements of Probate Code section 1200 et seq. The notice must contain the time, date and place of hearing.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.255

Notices Other than Written

A. Except as to written notices required by statute or these rules, oral notice must be provided to affected parties or their attorney and expert witnesses (if appearance is required) for any of the following actions:

- (1) Waiver of the presence of the expert;
- (2) Forensic examination by County-employed psychiatrists;
- (3) Inability or unwillingness of any conservatee to attend;
- (4) Termination of a temporary conservatorship.

(5) Any ex parte matter other than the establishment of a temporary conservatorship.

B. The notice required by this rule may be given by any means, including telephone. This notice must be given not less than one working day before the matter will be submitted to the court or the forensic examination is to occur. Where a decision to file for an appointment or termination of a temporary conservator is made less than one day before filing, notice must be given immediately after the decision to file. When a conservatee is unable or unwilling to attend a hearing and such inability or unwillingness is not made apparent in adequate time to allow for one working day notice, then notice shall be given immediately after the conservatee is found to be unable or willing to attend.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.256

Timing of Written Notices

A. All written notices except those described in this rule must be served in accordance with the time limits prescribed by Probate Code section 1460.

B. The following notices must be served on the attorney for the affected party no later than 15 days following the application for order or the date of change, whichever occurs first:

- (1) Termination of conservatorship
- (2) Change to more restrictive placement;
- (3) Return of rights.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.257

Amendment of Pleadings

The attention of attorneys is called to rule 327 of California Rules Court, which reads as follows:

A. Contents of Motion A motion to amend a pleading shall (1) include a copy of the proposed amendment or amended pleading; (2) state the effect of the amendment; (3) be serially numbered to differentiate the amendment from previous amendments; and (4) state the page, line number, and wording of any proposed interlineation of material.

B. Requirements for Amendment to Pleading

An amendment to a pleading shall designate the pages and lines of the pleading being amended. An amendment shall not be made by alterations on the face of a pleading except by permission of the court. All alterations shall be initialed by the court or clerk."

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95)

Rule 4.258

Calendars

A. The Mental Health Division's regular calendar is called at 9 a.m. each court day in the department designated by the presiding judge.

B. The place and time for conducting the regular calendars may be changed by order of the supervising judge.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.259

Calendar Hearings

A. Request for jury trials must be submitted to:

- (1) Calendar Division; and
- (2) Mental Health desk.

B. All other matters presented to the court, except requested for appointment or termination of temporary conservator, and surgical hearings, must be calendared through the Mental Health desk.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.260**Date of Hearing**

All petitions in Mental Health matters which require a hearing, other than writ of habeas corpus or ex parte, will, wherever possible, upon being filed with the court, be set by the clerk on the customary calendar day.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. July 1, 95; Renumbered eff. 7/1/2001)

Rule 4.261**Hearing Once Notified Cannot be Advanced**

When a hearing on a Mental Health matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice, unless so ordered by the court.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.262**Priority of Cases**

A. Subject to court discretion, cases on the regular calendar will be heard in the following order:

- (1) Stipulation matters read into the record;
- (2) Uncontested matters;
- (3) Contested conservatorships;
- (4) Writs of habeas corpus; and
- (5) Petitions to authorize medical treatment, medication (Riese) hearings or appeals, and electroconvulsive treatment.

B. A matter is considered to be contested if anyone issue is in question.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.263**Continuances**

Continuances will only be granted by the court upon an appearance by counsel for either party at the hearing and upon a showing of good cause and the conservatee's presence may be waived by the court.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.264**Automatic Continuance of a Temporary Conservatorship**

When a hearing on the appointment of a permanent conservator is continued, the temporary conservatorship shall automatically continue to be in effect until the date of continuance, unless otherwise objected to by counsel at the hearing.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.265**Request for Early Termination**

The conservator may file a request for early termination of conservatorship when:

A. The conservatee has reached treatment goals; and/or

B. The conservatee is no longer considered gravely disabled; and/or

C. The conservatee's whereabouts are unknown.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.266**Termination by Ex Parte Order**

Termination may be effected by ex parte order upon proper notice as herein provided in RULE 4.268 and Probate Code section 1862.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.267**Hearing upon Notice**

Early termination for reasons other than those stated in RULE 4.264 shall require a noticed hearing in accordance with the procedures outlined in the sections of these Rules related to "Notices" and "Reappointment of Conservator".

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.268**Service of Notice**

The attorney shall be given verbal notice of any early termination of conservatorship, and if objection to the termination is raised, the matter shall be calendared for hearing, and notice shall be given in accordance with the procedures outlined in "Notices" and "Reappointment of Conservator" in these rules.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.269

Termination Without Objection

If no objection to termination is made, then the conservatorship may be terminated by the court. (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.270**Notice of Conservatee for Early Termination**

The conservatee may move the court for an order terminating conservatorship prior to expiration of the one-year expiration date by scheduling a hearing and noticing the conservator of same in accordance with the provisions in the Rehearing section of these rules. (Adopted 7/1/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.271**Expiration of Temporary Conservatorship**

All temporary conservatorships shall expire automatically at the conclusion of 30 days, unless on, or prior to that date, continuance of the temporary conservatorship has been granted by the court or the temporary conservatorship is continued as provided in rules 4.263 and 4.264.

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

CHAPTER 27 JURY TRIALS

Rule 4.272**Notice****A. Oral Request for Jury Trial.**

When requesting a jury trial, the conservatee's attorney must give oral notification to the conservator and conservator's attorney. Such notice shall be either in open court when the request is made at the hearing or telephonically on the date the request is filed. If notice is to County Counsel it may be made to the deputy assigned to the Mental Health Court, Office of County Counsel, (619) 531-4860, and to the Calendar Division of the San Diego Superior Court.

B. Written Notice of Trial Date.

On the date that a jury trial is requested, the conservatee's attorney must serve, by mail, a copy of a written notice of jury trial date form on the conservator's attorney. The notice of jury trial date form shall include the conservatee's name, the case number, the attorney's name, address, telephone number, the date of the request and the scheduled date of the jury trial.

C. Compliance with Welfare and Institutions Code Section 5350, Subdivision (d).

The date of the jury trial shall not be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).

However, if the written demand for jury trial contains written approval of the requested trial date by the petitioner for the conservatorship, or his or her attorney, then the trial may be set beyond the 10 plus 15 day limit set forth in Welfare and Institutions Code section 5350, subdivision (d).

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.273**Calendaring**

Refer to rule 4.262.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.274**Disposition Without Trial**

A. When a jury trial request is to be withdrawn the conservatee's attorney must make the request either in open court or by a written declaration filed with the court and served on the conservator's attorney. Telephone notification that the request is to be withdrawn shall be given to the conservator's attorney as soon as possible and to the Calendar Division of the San Diego Superior Court.

B. When a petition is to be withdrawn by the conservator, the regular procedures for terminating conservatorships will be followed. (Refer to Reappointment of Conservator.) Telephone notification that the petition is to be withdrawn shall be given to the conservatee's attorney as soon as possible.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.275**Post Verdict Matters**

A. For Conservatee. If the verdict favors the conservatee, the conservatorship, if any, shall be terminated forthwith.

B. For Conservator Imposing Disabilities and Setting Placement.

(1) If a prior hearing was held, a conservator appointed, disabilities imposed and placement set and not vacated, then that order shall remain in effect after the jury trial.

(2) If there is no prior valid order appointing a conservator, fixing disabilities and placement, then the trial judge shall appoint the conservator and fix the disabilities and placement in accordance with the recommendations of the **Public Conservator**, in the absence of evidence to the contrary.

If the conservatee requests the presence of the treating psychiatrist, forensic psychiatrist or conservator for the hearing on appointment of a

conservator, the conservatee may at any time within five court days after the hearing, file a written hearing request in accordance with these rules. The hearing will be held in the Mental Health Division of the San Diego Superior Court; and the order of the trial court will remain in effect unless modified or vacated at that hearing.

C. Judgment. The prevailing party should submit a proposed judgment to the trial court as soon as possible.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; Rev. Eff. 1/1/2001; Renumbered eff. 7/1/2001)

CHAPTER 28

AUTHORIZATION FOR CONSENT TO MEDICAL/SURGICAL PROCEDURES

Rule 4.276

General

Pursuant to section 5358, subdivision (b) of the Welfare and Institutions Code, the court may give the conservator the right to require his or her conservatee to receive routine medical treatment unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled. Such court order shall permit the conservator or temporary conservator to authorize any medical treatment which is considered by the treating physician as "routine medical treatment". Authorization to consent to any procedure by the treating physician as "surgery" or which is considered by the treating physician as more invasive or intrusive than "routine medical treatment" shall require a court order for that specific procedure. (Adopted 7/1/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.277

Petition and Order

A. Where the court has given the conservator authority to give consent for medical treatment, ex parte petitions and orders for other than routine medical care may be submitted to the court under the following circumstances:

(1) The patient has not requested a hearing and is not opposed to the proposed procedure, or is so mentally disordered as to be unable to express an informed opinion regarding the procedure, and in good faith, based on medical advice, the conservator determines that the proposed procedure is required;

(2) The proposed procedure does not involve an amputation or substantial treat of loss of life;

(3) Relatives, friends or other persons the conservator has previously identified have not expressed opposition to the proposed procedure.

B. Court hearings shall be held to obtain authorization to consent to medical treatment other

than routine medical care under the following circumstances:

(1) The patient, family or any other person has expressed opposition to the proposed procedure;

(2) The conservator has substantial questions that the procedure should be performed;

(3) The proposed procedure involves an amputation or substantial treat of loss of life.

C. Authorization for the conservator to consent to medical/surgical procedures shall be obtained through the conservator filing a petition and order for such procedures which is accompanied by a letter signed under penalty of perjury by the doctor and/or a form which includes the information as referenced in Probate Code section 2357.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.278

Hearing

The court may convene at the facility providing treatment and care of the conservatee when the conservator provides evidence to the court that it would be physically injurious for the patient to be transported to the court, and/or there may be substantial treat of harm to the patient or others if the patient is transported to court.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.279

Notice

As referenced in section 5358.2 of the Welfare and Institutions Code, notice to the conservatee shall mean verbal notice.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.280

Transportation

The conservator shall be responsible for all necessary notice and arrangements for court hearings, and shall coordinate transportation of the conservatee to said hearings.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.281

Rehearing

Where the conservatee has been given the right to make medical decisions unrelated to remedying or preventing the recurrence of the conservatee's being gravely disabled, the conservator may petition the court for a rehearing on this matter where the treating physician and the conservator have reason to question the ability of the conservatee to give informed consent to medical treatment.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.282**Emergency Treatment**

Nothing in these rules shall in any way impede or affect other provisions of the law relating to emergency medical treatment, or emergency cases in which the conservatee faces loss of life or serious bodily injury. Under such cases, treatment may be provided as stipulated elsewhere in the law. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

CHAPTER 29 WRIT OF HABEAS CORPUS

Rule 4.283**Appointment of Counsel**

Pursuant to authorization of the Board of Supervisors, the Public Defender or the Alternate Defense Counsel is appointed to represent all patients in Mental Health matters, unless the court authorizes a substitution of attorney (rule 4.204) (Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.284**Filing Petitions, Orders, Writ**

Petitions for a writ of habeas corpus shall be filed with the Mental Health clerk in the clerk's office. The petition shall be filed with an order granting writ of habeas corpus and a writ of habeas corpus. Petitions shall be accepted for filing and file stamped immediately upon their presentation to the clerk. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.285**Applications for Writ Seeking Release or Modification of Custody**

A petition for a writ of habeas corpus, or for any other writ, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this state or local penal institution, hospital, narcotics treatment facility, or other institution shall be on a form approved by the Judicial Council, or on a printed form furnished or approved by the clerk of the court. (Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.286**Hearing**

Hearings on a writ shall be heard in the Mental Health Division, unless otherwise approved by the supervising judge.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.287**Time of Hearing**

A hearing on a writ shall be scheduled at the time the writ is filed. The mental health clerk shall notify the facility of the scheduled time for the hearing. Such notification will not replace the actual service of the writ requiring the patient to be present at the time set for the hearing. The hearing shall be held within two court days of filing.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

CHAPTER 30 ELECTROCONVULSIVE TREATMENT

Rule 4.288**Conditions for Administering**

Convulsive treatment may be administered to an involuntary patient pursuant to section 5326.7 of the Welfare and Institutions Code and to voluntary patients pursuant to section 5326.7, subdivision (c) of the Welfare and Institutions Code consistent with these rules.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.289**Appointment of Attorney**

(See rules 4.201 through 4.204)

(Adopted 7/11/84; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.290**Attorney's Consent to Patient's Capacity**

The patient's attorney is authorized to agree to the patient's capacity or incapacity to give written informed consent pursuant to section 5326.7 of the Welfare and Institutions Code. If the patient's attorney and physician agree that the patient has the capacity to give written informed consent, such agreement shall be documented in the patient's records. The attorney's consent must be obtained for additional treatments in number or time, not to exceed 30 days.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.291**Filing Petition**

If either the attending physician or the attorney believes that the patient does not have the capacity to give informed consent, either the attorney or the attending physician shall file a petition in San Diego Superior Court to determine the patient's capacity to give consent.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.292**Conflict of Interest**

The attorney representing the patient shall file a declaration with the court, prior to or at the time of the hearing, stating the reasons why the court should find that there is no conflict of interest in the attorney's representation of the patient. A copy of said declaration shall be made available to county counsel by the attorney filing the declaration.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95)

Rule 4.293**Declaration of Treating Physician**

The physician recommending the treatment shall submit to the court a declaration that states the conditions for administering convulsive treatment as referenced by section 5325.7 of the Welfare and Institutions Code have been satisfied. The declaration may be received into evidence unless counsel for the person named in the petition subpoenas the physicians appointed pursuant to Section 5326.7, subdivision (b). The treating physician shall be present at the hearing.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.294**Change of Patient's Condition**

If the court determines that the patient does have the capacity to give written informed consent, a subsequent petition shall not be filed unless it can be shown by facts stated in the petition that the patient's condition has changed since the court made the finding and that as a result of the changed condition, the patient does not have capacity to give a written informed consent.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.295**Appointment of Temporary Conservator**

If the court determines that the patient does not have the capacity to give written informed consent and there is no responsible relative or conservator of the patient available, the court may appoint the Public Counselor as temporary conservator. Such appointment may be made on the basis of testimony of the professional person representing the LPS

approved facility, that the patient has a mental disorder and is gravely disabled and that said professional person intends to file a conservatorship referral recommending conservatorship. In cases where the patient is found to be a danger to self and/or others but not gravely disabled, the court may appoint the Public Counselor as guardian ad litem for purpose of giving consent to convulsive treatment.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; 7/1/95; 7/1/2001)

CHAPTER 31 180 DAYS POST CERTIFICATION PROCEDURES FOR IMMINENTLY DANGEROUS PERSONS

Rule 4.296**Preparation of Petition**

A petition shall be prepared by County Counsel (pursuant to section 5114 of the Welfare and Institutions Code) supported by affidavits describing in detail the behavior of the patient which presents information as provided in section 5300 of the Welfare and Institutions Code.

(Adopted 7/11/84; Renumbered, Eff. 1/1/90; Renumbered & Amended, eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.297**Filing and Service of Petition**

Copies of the petition for post certification treatment and the affidavits in support thereof shall be served upon the person named in the petition on the same day as they are filed with the Mental Health desk.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.298**Affidavits**

The court may receive the affidavits in evidence and may allow the affidavits to be read to the jury unless counsel for the person named in the petition subpoenas the treating professional person.

(Adopted 7/11/84; Renumbered Eff. 1/1/90; 7/1/95; 7/1/2001)

Rule 4.299**Right to Attorney and Jury Trial**

The person named in the petition has the right to be represented by an attorney and a right to demand a jury trial. If the person named in the petition cannot afford an attorney, the court shall appoint an attorney (see rules 4.201 through rule 4.206).

(Adopted 7/1/84; Renumbered Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

**CHAPTER 32
CERTIFICATION REVIEW
HEARINGS****Rule 4.300****Compliance with Welfare and Institutions****Code**

Certification Review hearings shall be held in compliance with Welfare and Institutions Code Section 5256 et seq.

(Adopted 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.301**Procedures**

The Office of Counselor in Mental Health is appointed to administer/or conduct certification review hearings in compliance with section 5256 et seq. of the Welfare and Institutions Code. All persons involuntarily detained in psychiatric hospitals in San Diego County shall have a certification review hearing when a 14-day certification has been filed. Hearings will be held for all persons regardless of the basis for certification. Hearings shall be held within four days of the date on which the person was certified for intensive treatment, unless postponed by request of the person or his or her attorney or advocate. Hearings may be postponed 48 hours, or until the next regularly scheduled court date.

The following will apply to certification review hearings held in San Diego County:

A. Certification review hearings will be conducted at the facility where the person is receiving treatment;

B. Certification review hearings must be held in surroundings which allow for quietness and reasonable degree of confidentiality. A copy of the certification shall be at the certification review hearing;

C. "Representative of the treating facility" shall mean a registered nurse, psychiatrist, social worker or psychologist. A representative of the treating facility must be present at the hearing to give testimony and answer questions regarding the basis for continued detention and treatment;

D. Certification review hearings will be scheduled by the Office of Counselor in Mental Health unless the hearing is to be conducted by a certification review hearings stipulated in number J. below. Such hearing will be scheduled per agreement with the certification review hearing officer;

E. Friends, relatives and the patient's rights advocate or an attorney for the patient may be present and testify at the certification review hearing. Other persons will be admitted to the hearing at the discretion of the court commissioner or hearing officer;

F. Certification review hearings are not bound by rules of procedures of evidence applicable to judicial

proceedings. All evidence which is relevant to establishing that the person is, or is not, as a result of a mental disorder, a danger to themselves or others, or gravely disabled may be admitted at the hearing and considered by the court commissioner or hearing officer;

G. The person will be assisted in preparation for the hearing by the patient's rights advocate or a retained attorney who will meet the patient prior to the certification review hearing, to discuss the commitment process and to assist the person in preparing for the certification review hearing or to answer questions or otherwise assist the person as is appropriate;

H. The person certified shall have the right to make reasonable request for the attendance of facility employees who have knowledge of, or participated in, the certification decision;

I. Certification review hearings will be held for the person who has already requested a writ of habeas corpus hearing if the certification review hearing can be held on a date preceding the writ hearing. A certification review hearing will not be held where of habeas corpus hearing has been held;

J. Where the admission to the psychiatric facility has been ordered by the court pursuant to section 5200 of the Welfare and Institution Code, the certification review hearing will be conducted by an attorney who has been appointed by the San Diego Superior Court as a Mental Health hearing officer.

(Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

CHAPTER 33
DETERMINATION OF CAPACITY OF
MENTAL HEALTH PATIENTS
TO GIVE OR WITHHOLD INFORMED
CONSENT TO ADMINISTRATION OF
ANTIPSYCHOTIC MEDICATION
(RIESE HEARING)

Rule 4.302

Scope and Purpose

The following procedures are intended to implement the requirements of Riese v. St. Mary's Hospital (1988) 209 Cal. App.3d 1303, and Welfare and Institutions Code section 5332 et seq. They apply to patients, both adults and minors, who are being treated in public or private hospitals, and are being detained pursuant to Welfare and Institutions Code sections 5150 (72-hour hold), 5250 (14-day hold) or 5350 et seq. (temporary conservatorship). (Adopted Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.303

Petition

When the treating physician has determined that treatment of the patient's condition requires the administration of antipsychotic medication and the patient has refused to consent to the medication, the treating physician may petition the court for a legal determination as to whether the patient is capable of giving or withholding informed consent. (Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.304

Documents

To obtain determination of the patient's capacity to give or withhold informed consent to treatment by antipsychotic medication, the treating physician must complete, sign and date the "Petition of Treating Physician Regarding Capacity to Consent or Refuse Antipsychotic Medication." If the physician will not be present for the hearing, the petition must have attached to it a "Treating Physician's Declaration Regarding Capacity to Consent To or Refuse Antipsychotic Medication" form. These forms must be delivered to, faxed to the Office of Counselor In Mental Health in order to calendar a hearing. (Adopted, Eff. 7/1/90; Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.305

Calendaring Hearings

It is assumed that time is of the essence in each Riese hearing. The physician or treating facility must deliver or fax the forms as reference in RULE 4.303 in order to calendar a hearing. The office of the Public Conservator shall calendar all hearings upon receipt of the requisite forms. Whenever possible, the

hearing shall be set within two court days. The physician or treating facility shall notify the office of the Counselor in Mental Health of the need for an interpreter when one is needed at the hearing.

(Adopted 7/1/90; Renumbered & Amended, Eff. 7/1/1995; Riese v. St. Mary's Hospital & Medical Center (1987) 209 Cal. App. 3d 1303)

Rule 4.306

Counsel

The Presiding Judge of the Mental Health Division shall appoint the Public Defender or Patient Advocate to represent the patient in all Riese hearings. However the patient may retain counsel if financially able to do so. In such cases retained counsel shall be substituted for the Public Defender or Patient Advocate.

(Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001; Riese v. St. Mary's Hospital & Medical Center (1987) 209 Cal. App. 3d 1303)

Rule 4.307

Attorney Duties

The patient's attorney or Patient Advocate shall meet with the patient as far in advance of the hearing as possible to determine the patient's position with respect to the proposed antipsychotic medication. If the patient consents to the administration of antipsychotic medication prior to the hearing, it shall be the responsibility of the patient's attorney to notify the office of the Counselor in Mental Health promptly so the hearing may be canceled and unnecessary travel and expense may be avoided.

(Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.308

Appointment of Hearing Officers

The supervising judge of the Mental Health Division shall appoint attorneys as Hearing Officers to conduct the evidentiary hearings.

(Adopted, Eff. 7/1/90; Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.309

Patient Representation

Patients will be represented by the Public Defender or the Patient Advocate unless private counsel is retained by the patient.

(Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/1995; Renumbered eff. 7/1/2001)

Rule 4.310

Treating Physician/Facility Representative

Physicians and treating facilities may, but need not be formally represented by counsel. The physician or a facility representative shall present the petition and declaration as well as any oral or

documented evidence at the time of the hearing. The facility representative must be psychiatrist, psychologist, registered nurse, or a social worker with at least a masters degree. Although it is not required that the treating physician testify, it should be recognized that the absence of the treating physician may leave insufficient evidence of incapacity in the event the petition and declaration are deficient. (Adopted Eff. 7/1/90; Renumbered Eff. 7/1/95; 7/1/2001)

Rule 4.311**Surroundings of Hearing**

Hearings must be held in surroundings which allow for quietness and a reasonable degree of confidentiality. Whenever possible, the hearings will be held at the facility where the patient is located. In any event the hearing will be held as close to the facility as is practicable under the circumstances. Hearings shall be electronically recorded. (Adopted, Eff. 7/1/90; Renumbered Eff. 7/1/95; 7/1/2001)

Rule 4.312**Burden**

The burden shall be on the physician or treating facility to establish by clear and convincing evidence that the patient is incapable of giving or withholding informed consent to the administration of antipsychotic medication. (Adopted, Eff. 7/1/90; Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.313**Determination of Capacity**

In determining the patient's capacity to give or withhold informed consent, the judge or hearing officer will consider (1) whether the patient is aware of their mental condition, (2) whether the patient has been informed of and is able to understand the benefits and the risks of, as well as the alternatives to, the proposed medication and (3) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given patients whose informed consent is sought (Wel & Inst. Code § 5326.2) and otherwise participate in the treatment decision by means of rational thought processes. (Adopted, Eff. 7/1/90; Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.314**Patient Presence**

The patient shall have the right to be present at the hearing and, through counsel, to present evidence and to cross-examine witnesses at the hearing.

However, the patient may choose not to attend the hearing. (Adopted, Eff. 7/1/90; Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95)

Rule 4.315**Access to Records**

The judge or hearing officer shall have access to and may consider the relevant medical records of the patient as well as the petition and declaration of the physician in reaching the legal determination of the patient's capacity to give or withhold informed consent. (Adopted, Eff. 7/1/90; Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.316**Continuance of Hearings**

Upon a showing of good cause and at the discretion of the judge or hearing officer, a hearing may be continued for a reasonable amount of time. (Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.317**Determination**

At the conclusion of the hearing the judge or hearing officer shall make a legal determination whether the patient is capable of giving or withholding informed consent to the administration of antipsychotic medication. (Adopted, Eff. 7/1/90; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.318**Confidentiality**

The proceedings under these rules and all records of these proceedings shall be confidential as provided in Welfare and Institutions Code section 5328. (Adopted Eff. 7/1/90; Renumbered Eff. 7/1/95; 7/1/2001)

CHAPTER 34
WRIT OF HABEAS CORPUS
PROCEDURES FOR MINORS
ADMITTED TO PRIVATE
PSYCHIATRIC FACILITY BY A
PARENT

Rule 4.319

Applicability and Procedures

Minors admitted to private Psychiatric facilities by a parent shall be entitled to habeas corpus relief in a manner consistent with the provisions of the LPS Act.

This procedure applies to any minor who is voluntarily admitted to a private psychiatric facility by a parent who has legal and physical custody of the minor. As used in this section "minor" means any person age 10 through 17 years of age whose liberty is being restrained in a private (non-public) psychiatric treatment facility and the minor protests the restraint. For purpose of this section, writs of habeas corpus shall be subject to the general provisions of Penal Code section 1473 et seq.

A. Right to Writ

(1) Every minor age 10 through 17 years of age, whose liberty is being restrained in a private psychiatric treatment facility may request a writ of habeas corpus to inquire into the cause of such restraint.

(2) A writ of habeas corpus may be adjudicated to inquire into the basis for the restraint. The criteria is as follows:

(a) The minor is not being detained for evaluation and treatment of any disorder.

(b) Other causes which may be unlawful, as specifically stated in the petition.

Nothing in this section shall be construed as limiting the grounds for which a writ of habeas corpus may be prosecuted or as precluding the use of any other remedies.

B. Procedure

(1) When a minor requests release from any private psychiatric facility to any member of the facility treatment staff or the Patient Rights Advocate, that minor shall promptly be provided with a "Petition For A Writ of Habeas Corpus By a Minor". Such form shall be filed with the court by the facility delivering it to the clerk of the Mental Health desk at 220 West Broadway within the next work day following completion of the petition.

(2) Upon a finding of probable cause, the following shall occur:

(a) The judge shall endorse upon the petition the hour and date of the granting or denial of the writ, and a hearing shall be held within two court days. When a writ is granted, it shall be directed to the director of the facility restraining the minor, commanding the director to have the minor before the court at a time and place therein specified.

(b) The court shall appoint an attorney to represent the minor at the hearing.

(1) Delivery of Writ

The writ shall be delivered to the sheriff and shall be served upon the facility director without delay.

(2) Sick and Infirm Petitioner

The writ will be adjudicated in accordance with Penal Code section 1482.

(3) Discharge or Remand

If the writ is discharged the minor shall be released to the custody of their parents or other authority within a reasonable time, which shall be allowed to make adequate arrangements for the care of the minor. If the writ is remanded, the minor may continue to be restrained in accordance with any other pertinent laws and regulation.

(Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

CHAPTER 35
ADMINISTRATIVE PROCEDURE FOR
ADMISSION OF MINORS FOR ACUTE
CARE PSYCHIATRIC HOSPITAL
TREATMENT WHO ARE WARD OR
DEPENDENT OF THE
JUVENILE COURT

Rule 4.320

Applicability and Definitions

HOSPITALIZATION OF DEPENDENTS
AND WARDS

A. This policy is applicable upon the presentation of a dependent minor or ward to a psychiatric facility for the purpose of inpatient evaluation and treatment.

B. This policy is not applicable to non-dependent minors or non-declared wards.

C. Admissions of minors who are not subject to the jurisdiction of the Juvenile Court shall be governed by the provisions of the LPS Act, or other applicable law.

D. The reference to the term minor or minors as used in this policy shall refer to a minor child who has been adjudged a dependent or ward pursuant to the applicable provisions of the Welfare and Institutions Code.

E. Any reference in this policy requiring that notice be given shall require notice to the following individuals: the minor's attorney, each parents' attorney, the parent, County Counsel, any court-appointed special advocate, and the office of the Patient Advocate.

F. The term "Department" shall mean the Department of Social Service if the minor is a dependent child, or the Probate Department if the minor is a ward.

(Adopted Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.321**Involuntary Hospitalization for the Initial 72-hour Period**

A. Involuntary hospitalization of minors shall occur only under the provisions of section 5585 et seq. or 5350 of the Welfare and Institutions Code.

B. Pursuant to section 5585, and other applicable laws, the facility and its professional staff shall determine whether the minor meets the criteria for admission for the initial 72-hour period.

C. Notice shall be given by the Department indicating that the minor was presented to the facility for LPS evaluation and was either admitted to the facility, or was deemed not subject to admittance under provisions of section 5585 et seq. If the minor is admitted without the knowledge of the Department, the Department shall, upon being informed to the minor's admission, under take reasonable steps to provide notice required by this policy.

D. If the minor is admitted into the facility, the Department shall, in addition to the notice referred to in paragraph C. above, contact the minor's attorney, in person or by phone, within six hours of admission. If the minor's attorney cannot be so contacted, or if he otherwise unavailable, such notice shall be given to the office of the Patient Advocate.

E. Upon receiving the notice specified in paragraph D. above, the minor's attorney, or patient advocate when attorney is unavailable, shall, within 24 hours, do the following:

- (1) Interview the minor at the facility;
- (2) Explain to the minor his/her rights, under the LPS Act, all in a manner to assist the minor to understand;
- (3) Counsel the minor regarding voluntary treatment, as set forth in section 6552 of the Welfare and Institutions Code; and
- (4) Assure that all procedural requirements are fully met.

F. The Treatment and Aftercare recommendations required by statute shall be provided to the Department who shall then incorporate the same in the planning process for proper placement of the minor upon discharge from the facility. The Department shall inform the Court of any delays or difficulties in receiving the Treatment and Aftercare recommendations from the facility.

G. If, after the expiration of the 72-hour period, the minor is not certified for the 14-day period described in section 5250, et seq. of the Welfare and Institutions Code, and if the minor has not completed the voluntary application referred to in these rules, the minor shall be discharged from the facility to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy.

(Adopted, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.322**Involuntary Hospitalization After The Initial 72-Hour Period**

A. Any further involuntary hospitalization of minors after expiration of the initial 72-hour period shall occur only under the provisions of the LPS Act.

B. It is the sole responsibility of the facility and its professional staff to determine whether the minor meets the criteria for further hospitalization under the provisions of the LPS Act.

C. The office of the Patient Advocate or the minor's attorney shall represent the interests of the minor during any Certification Review Hearing conducted under the LPS Act, in accordance with Welfare and Institutions Code Sections 5255-5256.7.

D. At the expiration of the involuntary status under LPS or sooner if the minor is discharged from the facility, the minor must be returned to the custody of the Department for further placement consistent with the procedures of the Welfare and Institutions Code and court policy, unless the minor completes the voluntary application referred to in this policy.

(Adopted, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.323**Involuntary Hospitalization (Welf. & Inst. Code, § 6552)**

A. The term "voluntary hospitalization" shall mean the request, by the application, of the minor to seek inpatient mental health services.

B. The term "by an application" shall mean the request of the minor to seek or receive inpatient mental health services.

C. The application must be a form in writing, and must include, at a minimum, the following:

(1) An acknowledgment by the minor and his/her attorney that the minor understands the need to receive treatment, its probable duration and treatment regimen, and his/her desire to receive such treatment;

(2) An acknowledgment that the minor has been made aware of his/her rights, the consequences of waiver, all in a manner the minor is able to understand.

D. An acknowledgment of the right to revoke the application and be discharged pursuant to rule 4.323, paragraph J, unless the minor may be involuntarily detained under sections 5585 or 5350.

E. The application, signed by the minor after advisement by the attorney or patient advocate, shall constitute the only basis for the facility to accept the minor as a voluntary patient, pending the court order referred to in rule 4.323, paragraph F.

F. The duly executed application shall be presented to the Juvenile Court ex parte, whereupon the court shall make the findings pursuant to section

6552 that the minor be authorized to make a voluntary application. The finding shall be based on the evidence presented, but shall include at a minimum the following:

(1) The voluntary application signed by the minor, together with the attorney certification signed by minor's counsel.

(2) A declaration or affidavit by the attending therapist that the minor suffers from a mental disorder; the facility is qualified to treat the disorder; and there is no less restrictive facility available or appropriate which may better meet the needs of the minor.

(3) A medication plan that sets forth the category of medications, if any, to be administered to the minor.

G. Upon making the findings referred to in paragraph F, the Juvenile Court shall issue an order authorizing the voluntary admission of the minor for treatment. Such an order shall be served on all counsel and parties. Such an order shall construed solely as an authorization for treatment pursuant to section 6552 and shall not constitute a court-ordered commitment. Upon being served, any counsel or party may schedule a special hearing for purposes of objecting to the court order. The special hearing must be heard within three (3) judicial days.

H. A court order authorizing the voluntary admission of a minor for treatment shall not deprive the minor of the right to revoke the voluntary application.

I. A revocation of the voluntary application shall be communicated immediately to the Department who shall calendar a special hearing for the next court day, and who shall notify all counsel and parties.

J. The minor must be released to the Department after the court hearing referred to in paragraph I, unless the provisions of the LPS Act are satisfied. (Adopted, Eff. 7/1/95; Renumbered eff. 7/1/2001)

CHAPTER 36 ADMINISTRATIVE PROCEDURE FOR ADMISSION OF MINORS WHO ARE NOT DEPENDENTS OR WARDS OF THE JUVENILE COURT FOR ACUTE CARE PUBLIC PSYCHIATRIC HOSPITALS AND PRIVATE FACILITIES UNDER CONTRACT WITH THE COUNTY ("ROGER S" HEARINGS)

Rule 4.324

Applicability

This procedure applies to only those admissions in which the responsible person (other than a public official) seeks to admit a minor 14 through 17 years of age for evaluation or treatment of a mental disorder to a public facility and private inpatient facilities under contract with the County (i.e.: County Psychiatric Hospital or UCSD Medical Center). Admissions or detentions which are not referenced in these procedures shall not be affected by these procedures, including, but not limited to the following: Welfare and Institutions Code section 5150 et seq., (Detention of Mentally Disordered Persons for Evaluations and Treatment), 5170 et seq., (Court Ordered Evaluation for Mentally Disordered Persons), 5225 et seq., (Court Ordered Evaluation for Persons Impaired by Chronic Alcoholism), 5250 et seq., (Certification for Intensive Treatment), 5260 et seq., (Additional Intensive Treatment of Suicidal Persons), 5300 et seq., (Post Certification Procedures for Dangerous Persons), or 5350 et seq., (Placement by Conservator for Gravely Disabled Persons). This procedure does not affect laws pertaining to what agency or individual has the right to consent to mental health or psychiatric treatment on behalf of a minor.

(Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.325

Definitions

A. "Hearing Officer" means a designee of the Mental Health or Juvenile Division of the court, and includes attorneys appointed to conduct Capacity hearings (see rule 4.307) or professional staff from the Office of the Counselor In Mental Health who are appointed as hearing officers as referenced in section 5334, subdivision (c) of the Welfare and Institutions Code;

B. "Facility" means any public or private facility under contract to provide services paid by County Mental Health, or any hospital licensed to provide acute care inpatient psychiatric treatment;

C. "Minor" means: any person who is age 14 through 17 years of age who is not emancipated;

D. "Responsible person" means a parent, guardian, or other person having custody of the minor;

E. "Patient Advocate" means the designated Title IX patient rights advocate who will assure that minors are informed of their right to pre-admission hearings and assure that minors who waive the right to a hearing have done so freely, voluntarily and intelligently;

F. "Work day(s)" means judicial days (or a day when the court is open);

G. "Public facility" means any facility owned or operated by the State of California or the County of San Diego;

H. "Professional person" means a psychiatrist, psychologist, social worker with a master degree, licensed marriage, family and child counselor, or registered nurse.

(Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.326

Initiating Hospitalization

A. When it is determined by an appropriate mental health professional that a minor is in need of psychiatric inpatient services, the responsible person, or staff representing the proposed treatment facility, shall, prior to any admission to a facility initiate these procedures: (1) obtain a physician's affidavit; and (2) contact the patient advocate who shall either in person or by telephone, inform the minor of the right to a hearing and determine whether the minor will freely, voluntarily and intelligently waive the right to a hearing, and may inform the minor of other patient rights;

B. The "Physician's Affidavit" shall include the following information:

(1) Whether the minor suffers from a mental disorder, and if so, its nature;

(2) Whether the proposed treatment program, which require 24-hour hospital care, is reasonably expected to ameliorate the mental disorder;

(3) Whether the proposed facility in which the minor is to be placed is the least restrictive and most appropriate and available facility which can fulfill objectives of treatment; and

(4) Whether the treatment facility is in the minor's home community or that the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

C. When a minor has been involuntary detained at a facility under other provisions of law, and the responsible person desires to voluntarily admit the minor, the facility staff may assist in initiating voluntary admission. For the purposes of this procedure the voluntary admission will be treated as

new admission to the facility regardless of prior involvement of the minor with the facility;

D. The physician's affidavit must be available at the facility when the patient advocate determines whether the minor is protesting the admission, and must be available to the hearing officer at the hearing.

E. The professional person testifying at the hearing may be a person other than the person signing the "Physician's Affidavit" who is familiar with the treatment needs of the minor and available and/or potential resources.

F. When the minor protest the admission at the time of the evaluation for admission, or prior to the time of the patient advocate seeing the minor to ascertain whether the minor is protesting the admission, the procedures described in rule 4.328 shall apply.

(Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.327

Procedure for a Non-Protesting Minor who Wishes to Waive the Right to a Hearing

A. Before the minor waives the right to a hearing, the Patient Advocate shall contract the minor by telephone or in person to ascertain whether the minor is protesting the admission, and to provide notification of the right to a hearing. The Patient Advocate shall certify that the minor freely, voluntarily, and intelligently waived the right to a hearing. The patient advocate and the minor shall sign the approved "Waiver of Hearing" form, hereinafter referred to as "waiver", except where the waiver is obtained telephonically, in which case the waiver on page 2 of the "waiver" shall suffice. When the waiver is signed, this shall allow admission to the facility, providing other necessary authorization(s) (e.g., permission of the responsible person or legally authorized designee) is/are also available. The "waiver" shall remain in the minor's record at the treating facility. A copy of the signed waiver and the physician's affidavit shall be given to the facility to which the minor is to be admitted.

B. When the waiver has been signed by a person other than the Patient Advocate due to telephone authorization, on the next work day following admission of the minor, the Patient Advocate shall personally interview the minor and review the waiver. If in the opinion of the Patient Advocate, the minor is not freely, voluntarily and intelligently waiving the right to the hearing, or if the minor is now protesting the admission and requesting a hearing, the Patient Advocate shall again advise the minor of the right to a hearing. A hearing must be held within five work days from the date the minor requests a hearing unless an agreement has been reached pursuant to rule 4.328H;

C. If, in the opinion of the Patient Advocate, the minor is not freely, voluntarily, and intelligently waiving the right to the hearing, or if the minor is protesting the admission and is requesting a hearing, the Patient Advocate shall notify facility staff of the need for a hearing, and the facility staff or responsible person shall arrange for a hearing through the Office of Counselor in Mental Health. A hearing shall be held within five work days from the date the Patient Advocate informs the facility of the need for a hearing (unless an agreement has been reached pursuant to rule 4.328H;

D. In situations where a minor was admitted as an inpatient to a facility in accordance with the provisions of this procedure and waived the right to a hearing and subsequently indicates to the Patient Advocate, patient's counsel, any member of the treatment staff, or the responsible person a desire to have a hearing and/or be released from the facility, then a hearing shall be conducted by a hearing officer within five work days from the time of the request for hearing being filed with the Office of Counselor in Mental Health, unless agreement has been reached pursuant to rule 4.328H.
(Amended, Eff. 7/1/91; Renumbered & Amended, Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.328

Protesting Minor

A. When the minor protests the admission and requests a hearing, the facility staff or Patient Advocate shall promptly telephone the Office of Counselor in Mental Health and request a hearing;

B. No admission shall be made for a protesting minor under these procedures until a hearing is held or the minor waives the right to a hearing. It is the intent of these procedures that hearings shall be held on a pre-admission basis, unless the minor has been previously admitted under other provisions of law;

C. An attorney or the Patient Advocate shall be appointed to represent the minor at all hearings for admission to a hospital for acute psychiatric treatment;

D. Upon receipt of the request for a hearing, the Office of Counselor in Mental Health shall:

(1) Set a date for a hearing which shall be scheduled no later than five work days after the request for hearing has been received unless agreement has been reached pursuant to rule 4.328H; and

(2) Shall give notice of the hearing to the following by telephone:

(a) The attorney or the Patient Advocate;

(b) The proposed facility;

E. The proposed facility or responsible person shall notify the minor of the hearing;

F. The proposed facility shall make reasonable effort to notify the responsible person and/or parent(s) of the hearing;

G. The minor's counsel and the hearing officer may review all clinical and medical records in accord with the Welfare and Institutions Code sections 5328, subdivision (j), 5328, subdivision (m), and 5540-5546;

H. Nothing herein shall preclude the hearing from being held more than five work days from the date of the request, for good cause, and upon agreement of the hearing officer and attorney or the Patient Advocate;

I. At the hearing, the attorney or Patient Advocate shall represent the minor. The minor and the attorney or Patient Advocate shall have the right to:

- (1) Review the Physician's affidavit;
- (2) Be present at the hearing;
- (3) Present evidence and call witnesses;
- (4) Confront and cross-examine witnesses;

and

(5) Waive the minor's right to be present at the hearing;

J. The hearing shall be held in a place convenient to the parties and in an informal setting. The public shall be excluded from the hearing, subject to exceptions made at the discretion of the hearing officer, inclusive of family members. Hearings shall be electronically recorded, and all records shall be held as confidential as provided in section 5328 of the Welfare and Institutions Code;

K. Hearings shall be conducted in an informal manner and the hearing officer may consider all evidence of probative value irrespective of whether it complies with formal rules evidence. The decision of the hearing officer shall be based on the preponderance of evidence. All of the following shall be established at the hearing:

(1) The minor suffers from a mental disorder;

(2) The proposed treatment program requires 24-hour hospital care and is reasonably expected to ameliorate the mental disorder;

(3) The proposed facility in which the minor is to be placed is the least restrictive and most appropriate facility which can fulfill the objectives of treatment; and

(4) If the treatment program is not in the minor's home community, the benefit of placement outside the home community outweighs the detriment of separating the minor from the home community;

L. The hearing officer shall make findings in writing to support the decision. Following the hearing, the hearing officer shall issue an order authorizing admission to the recommended or alternate facility or an order denying admission. Copies of the findings and order shall be provided to all the following:

- (1) The minor;
- (2) The attorney or Patient Advocate;
- (3) The responsible person, upon request;
- (4) The proposed facility.

Whenever possible a mental health professional who will participate in treatment in the proposed facility or a professional person who has participated in the minor's treatment shall be available to present testimony at the hearing;

M. Nothing in these procedures shall require a facility to accept a minor;

N. The minor may be admitted to the authorized facility within 15 calendar days following the hearing; (Amended, Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.329

Facility Review

Facilities accepting minors under this procedure shall provide periodic review of the minor's treatment program to assure that continued treatment is required. Documentation of such reviews shall appear in the minor's records at least monthly. (Renumbered Eff. 7/1/95)

Rule 4.330

Confidentiality

Confidentiality shall be in accord section 5328 et seq. of the Welfare and Institutions Code. The hearing officer shall be considered a "court" as referenced in section 5328, subdivision (f) of the Welfare and Institutions Code. (Renumbered Eff. 7/1/95; 7/1/2001)

Rule 4.331

Records

Records shall be maintained as provided for by law. (Renumbered Eff. 7/1/95; 7/1/2001)

Rule 4.332

Writ of Habeas Corpus

If admission is authorized, the attorney or Patient Advocate shall advise the minor of the right to a writ of habeas corpus hearing. If a request for release is filed, the writ of habeas corpus hearing shall be in the Mental Health Division. (Amended, Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)

Rule 4.333

Filing a Writ of Habeas Corpus

Nothing herein shall deprive the minor of the right to seek a writ of habeas corpus. (Amended, Eff. 7/1/91; Renumbered & Amended Eff. 7/1/95; Renumbered eff. 7/1/2001)